

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE
INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT
SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM
COMMERCE LABS INC., INITIUM TRADING AND SOURCING
CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA
INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711
CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

APPLICANTS

MOTION RECORD OF THE APPLICANTS

(Motion for Approval of Asset Purchase Agreement – Garden City)

August 11, 2017

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SUPERIOR COURT OF JUSTICE
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1001, Square Victoria
Montreal, QB H2Z 2A8

Northwest Freehold Limited
c/o Mall Manager's Office
Garden City Shopping Centre
2305 McPhillips Street
Winnipeg, MB R2V 3E1

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Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

Applicants

NOTICE OF MOTION

(Motion for Approval of Asset Purchase Agreement – Garden City)

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on August 18, 2017 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order (the “**Approval and Vesting Order**”) substantially in the form attached at Tab 3 of the Motion Record, *inter alia*:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;

- (b) approving the asset purchase agreement entered into as of April 12, 2017 between the Purchaser (as defined in the Approval and Vesting Order) and Sears Canada Inc. (“**Sears Canada**”), as amended, and vesting Sears Canada’s right, title and interest in and to the Purchased Property (as defined in the Approval and Vesting Order) in the Purchaser; and
 - (c) sealing from the public record certain commercially-sensitive information and documents (as described below).
2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicants were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated;
2. FTI Consulting Canada Inc. was appointed to act as the Monitor (the “**Monitor**”) in the CCAA proceeding;

Approval and Vesting Order

3. On July 13, 2017, the Court approved a process (the “**Sale Process**”) by which BMO Nesbitt Burns Inc. (the “**Sale Advisor**”) on behalf of Sears Canada and under the supervision of both the Special Committee of the Board of Directors of Sears Canada and the Monitor, will seek bids and proposals for a broad range of transaction alternatives with respect to the business, assets and/or leases of the Applicants;
4. The Sale Process includes a provision that allows Sears Canada, in its reasonable business judgment and in consultation with the Sale Advisor, the Monitor and the DIP Lenders, to withdraw assets from the Sale Process in accordance with the CCAA and Sears Canada’s rights under the Initial Order;

5. On April 12, 2017, Sears Canada entered into an asset purchase agreement (as amended, the “**APA**”) with the Purchaser to purchase Sears Canada’s lands and buildings located at the Garden City Shopping Centre, 2311 McPhillips Street, Winnipeg, Manitoba (“**Garden City**”) for a purchase price of \$5,000,000;
6. The consideration to be received for Garden City is fair and reasonable;
7. The process leading to the APA was fair and reasonable;
8. Removing Garden City from the Sale Process and completing the APA will likely maximize the value to be achieved from the property;
9. The APA is in the best interests of the creditors and other stakeholders of Sears Canada;
10. The relief sought on this motion is supported by the Monitor, the Sale Advisor and the DIP Lenders;
11. The debtor-in-possession credit agreements (“**DIP Agreements**”) require that the Net Proceeds of any Disposition (both as defined in the DIP Agreements) shall be applied promptly, and in any event no later than three business days after receipt thereof, to prepay the Obligations (as defined in the DIP Agreements) in the priority provided for in the DIP Agreements;

Sealing Orders

12. Confidential Appendix “A” and “B” to the Second Report of the Monitor – being two property value appraisals for the Garden City property – contain confidential and commercially sensitive information which, if made public, would be materially prejudicial to Sears Canada and detrimental to the Sale Process if the proposed sale transaction is not completed and Garden City must be the subject of further marketing efforts;
13. There are no reasonable alternative measures to sealing this information from the public record;
14. The salutary effects of sealing this information outweigh the deleterious effects of doing so;

15. The provisions of the CCAA, including section 36, and the inherent and equitable jurisdiction of this Honourable Court;

16. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and

17. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Affidavit of Billy Wong sworn June 22, 2017 and exhibit K attached thereto;
2. The Affidavit of Stephen Champion affirmed August 11, 2017 and the exhibits attached thereto;
3. The Second Report of the Monitor; and
4. Such further and other evidence as counsel may advise and this Court may permit.

August 11, 2017

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Toronto, ON M5X 1B8

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Tracy Sandler (LSUC# 41851R)

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Tel: (416) 362-2111

Fax: (416) 862-6666

Lawyers for the Applicants

TO: SERVICE LIST

IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

Court File No: CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF MOTION

(Motion for Approval of Asset Purchase Agreement – Garden City)

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Lawyers for the Applicants

Tab 2

Court File No. CV-17-11846-00CL

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

APPLICANTS

AFFIDAVIT OF STEPHEN CHAMPION
(Affirmed August 11, 2017)

I, Stephen Champion, of the Village of Nobleton, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the Executive Vice-President, Real Estate and Strategic Opportunities of Sears Canada Inc. ("**Sears Canada**" or the "**Company**"), one of the Applicants in these proceedings. In this role, I am responsible for managing Sears Canada's real estate portfolio, including negotiating and completing numerous real estate transactions. As such, I have personal knowledge of the matters deposed to in this affidavit, except where stated to be on information and belief, in which case I believe the information to be true.
2. This affidavit is being affirmed in support of a motion seeking an Approval and Vesting Order, substantially in the form attached to the Motion Record, approving the APA (as

defined below) and vesting in and to the Purchaser (as defined below) all right, title and interest of Sears Canada in and to the Garden City Property (as defined below).

Background to the APA

3. The Applicants were granted protection from their creditors under the CCAA pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated on July 13, 2017 (the “**Initial Order**”). Further details regarding the background to these proceedings are set out in the Affidavit of Billy Wong sworn June 22, 2017 (the “**Initial Order Affidavit**”). Except where so stated, capitalized terms not otherwise defined herein have the meaning ascribed to them in the Initial Order Affidavit, the Initial Order or the APA.

4. As described in the Initial Order Affidavit, the Sears Canada Group owns a number of properties where it operates retail stores. One of these properties is the lands and buildings located at the Garden City Shopping Centre, 2311 McPhillips Street, Winnipeg, Manitoba (the “**Garden City Property**”), where Sears currently operates an Outlet store. Sears had previously operated a full-line department store in this location. A copy of the status of title for the Garden City Property from the Property Registry for the province of Manitoba is attached as Exhibit “A”.

5. Prior to the CCAA filing, the Garden City store was operating at a net loss of over \$1 million per year. As a result of the poor performance of the Garden City Property and the uncertainty of Sears Canada’s future viability in this location management decided to seek the sale of the property. Further, the Garden City store was listed as a store that the Applicants intend to close in the Initial Order Affidavit.

6. Over the course of several months, based on my market knowledge of potential purchasers, Sears Canada marketed the Garden City Property by contacting a number of buyers including national retailers, property developers and the landlord who owns the remainder of the Garden City Shopping Centre. The proposals received by Sears Canada were as follows:

- a. In November 2016, Sears Canada received a letter of interest relating to numerous properties from a party that was interested in, among other things, leasing the Garden City Property from Sears Canada. However, as part of the proposal, the interested party sought to lease the property (not to purchase) with the expectation that Sears Canada, as the landlord, would provide tenant allowances for redevelopment capital expenditures. As Sears Canada was unwilling to pay for capital expenditures associated with the Garden City Property, Sears Canada did not further pursue this indication of interest.
- b. On April 4, 2017, Sears Canada received a letter of interest with respect to the Garden City Property from WCRE Investments Ltd. (“**WCRE**” or the “**Purchaser**”), a company related to Hungerford Properties Inc. Sears Canada entered into negotiations with WCRE. On April 12, 2017, Sears Canada entered into an asset purchase agreement (the “**Original APA**”) with WCRE to purchase the Garden City Property on an “as is, where is” basis for a purchase price of \$5,000,000. Under the Original APA, there was no requirement that Sears Canada be a tenant of the property after the sale. Sears Canada understands that the Purchaser intends to redevelop the property. The Purchaser has been a highly motivated and cooperative party throughout the negotiations.

- c. Prior to the CCAA filing, Sears Canada received a non-binding proposal relating to a number of properties. This proposal specified a purchase price of \$6,750,000 for the Garden City Property, providing that Sears Canada would sell the property and would lease it back from the purchaser on the terms contained in the proposal. In the event that the parties elected not to sign the lease, the proposal provided that the purchase price for a standalone sale would be \$4,500,000. Sears Canada considered this non-binding proposal and determined that it would not be in Sears Canada's best interests to pursue a sale leaseback transaction, as this would require Sears Canada to spend the necessary capital expenditures to improve the property and the property had been slated for closure by the company. The potential purchase price for the standalone sale was lower than the firm and committed purchase price offered by the Purchaser in the Original APA, and was therefore not attractive.
- d. Since entering into the Original APA, nothing has arisen that would cause Sears Canada to move in a different direction with respect to the Garden City Property.

7. Sears Canada received a property value appraisal for the Garden City Property from a leading property valuation firm dated December 31, 2016. At the request of the Term Loan Lenders, a subsequent appraisal was prepared for the Garden City Property dated May 31, 2017. No potential purchaser has been identified who is prepared to purchase the property based on the assumptions contained in the appraisals. Copies of the appraisals will be attached as a Confidential Appendix to the Monitor's Report that will be filed in connection with this motion. The appraisals contain confidential information that could be materially prejudicial to the Sears Canada Entities in connection with the Sale Process generally and in connection with any further marketing of the Garden City Property in particular if the proposed transaction does not proceed to close as

anticipated. As such, Sears Canada is requesting that a sealing order be granted with respect to these documents.

The APA with the Purchaser

8. After canvassing the market and considering the proposals outlined above, Sears Canada decided to proceed with the Original APA with the Purchaser. The Original APA contained a Condition Waiver Date (as defined in the Original APA) of July 25, 2017 (5:00 pm CST). Therefore, although the transaction was entered into prior to the commencement of the CCAA proceedings, it had not yet closed when Sears Canada filed for CCAA protection.

9. As a result of the commencement of these CCAA proceedings, Sears Canada and the Purchaser agreed to amend the terms of the Original APA by way of an amending agreement to account for the requirement to obtain an Approval and Vesting Order of the Court to effect the transfer of the assets. Sears Canada and the Purchaser signed an amendment to purchase and sale agreement and waiver of conditions dated as of July 28, 2017 (the “**Amendment**”, and together with the Original APA, the “**APA**”).

10. A copy of the APA is attached to this affidavit as Exhibit “B”. The APA includes the following terms:

- a. A purchase price of \$5,000,000;
- b. An Initial Deposit of \$20,000 that was provided to the Purchaser’s solicitors in trust within two business days of the execution of the Original APA (this deposit was subsequently transferred, along with interest accrued thereon, to the Monitor in trust, within three business days of the execution of the Amendment);

- c. An Additional Deposit of \$380,000 that was provided to the Monitor in trust within two business days after the satisfaction or waiver of the Purchaser's conditions precedent;
 - d. The requirement that the transaction be completed on an "as is, where is" basis;
 - e. The requirement that the Purchaser's conditions precedent be waived or satisfied by July 26, 2017. The Purchaser's conditions precedent include Board approval, completion of due diligence following a review of the Delivery Materials, an environmental assessment, geotechnical review and land and building survey, and a financing commitment from a third party lender. The Amendment confirmed that the Purchaser had waived all conditions precedent set out in section 6.1 of the Original APA.
11. The only condition that remains to be satisfied before Closing is obtaining the Approval and Vesting Order. The Amendment provides that it is a condition precedent that the Approval and Vesting Order be issued and entered by August 25, 2017. Closing of the transaction will occur five business days after issuance of the Approval and Vesting Order, or such other date agreed to by the parties in writing, provided that Sears Canada will have the right (with the approval of the Monitor) to extend the Completion Date of the transaction until no later than October 16, 2017.
12. On July 13, 2017, the Court approved a Sale Process whereby BMO Nesbitt Burns Inc. (the "**Sale Advisor**") on behalf of Sears Canada and under the supervision of both the Special Committee of the Board of Directors of Sears Canada and the Monitor will seek bids and proposals for a broad range of transaction alternatives with respect to the Business, Property, Assets and/or Leases of the Applicants (each as defined in the Court-approved Sale Process). The Sale Process

was designed to be flexible in order to maximize the realization of the value of the Sears Canada Entities' assets for the benefit of their stakeholders. The Sears Canada Entities and the Sale Advisor contemplated that the process may result in multiple transactions in a variety of forms, and provided for the possibility that certain Leases and/or Assets may be withdrawn from the Sale Process in certain circumstances. To that end, the Sale Process includes a mechanism in paragraph 16 that allows Sears Canada to withdraw any Leases or Assets from the Sale Process:

Notwithstanding anything else contained herein, Sears Canada, in its reasonable business judgment and in consultation with the Sale Advisor, the Monitor and the DIP Lenders may, from time to time, withdraw any Leases or Assets from this Sale Process in accordance with the CCAA, and Sears Canada's rights under the Initial Order.

13. As the transaction with the Purchaser had not yet closed, the Applicants and the Sale Advisor considered whether to terminate the APA and include the Garden City Property in the broader Sale Process, having regard to a variety of factors, including but not limited to:

- a. the estimated market value of the Garden City Property based on the sales and marketing efforts undertaken to date;
- b. the identity and anticipated motivations of any third parties who may be interested in acquiring the Garden City Property or any part thereof;
- c. the form and amount of consideration being offered;
- d. the certainty of the transaction set out in the APA as opposed to the uncertain prospect of a better bid;
- e. the financial capability of the Purchaser to consummate the contemplated transaction;

- f. the timing of the contemplated transaction;
- g. certainty of closing, including the fact that the Purchaser waived its conditions precedent when it executed the Amendment, which included a financing condition;
and
- h. the impact on the Sale Process of removing the Garden City Property from the process.

14. Sears Canada is of the view that the market for the Garden City Property was canvassed and that the current APA with the Purchaser represents fair market value for the property and is in the best interests of the estate and its stakeholders. I am advised by the Sale Advisor that removing the Garden City Property from the Sale Process and completing the APA will likely maximize the value to be achieved from the property and that the Sale Advisor supports its removal from the Sale Process. I understand that the Monitor and the DIP Lenders have been consulted and support this view. Accordingly, subject to the approval of the Court, Sears Canada proposes to withdraw the Garden City Property from the Sale Process in accordance with its rights under paragraph 16 of the Sale Process and under the Initial Order in order to sell it to the Purchaser in accordance with the APA.

15. On July 18, 2017, the Court granted an Order approving the commencement of liquidation sales (the “**Liquidation Sale Approval Order**”) to be conducted by a contractual joint venture comprised of four liquidation firms (collectively, the “**Agent**”). The Garden City Outlet store is one of the stores subject to the Consultant’s Sale (as defined in the Liquidation Sale Approval Order), and Sears Canada is currently in the process of conducting a liquidation sale of the Merchandise and FF&E (as defined in the Liquidation Sale Approval Order) at this store. As noted above, Sears Canada has the right pursuant to the APA to extend the Completion Date until

no later than October 16, 2017, which will allow sufficient time for the liquidation sale at this store to be completed.

16. I believe that Sears Canada and the Sale Advisor have analyzed the alternatives for maximizing value with respect to the Garden City Property. It is Sears Canada's view, with the support of the Monitor, the Sale Advisor and the DIP Lenders, that the sale of the property through the APA provides the best opportunity to maximize value for this property for the benefit of all stakeholders of the Applicants and that the consideration that Sears Canada will receive under the APA is fair and reasonable. As such, the Applicants are seeking an Approval and Vesting Order approving the APA and the vesting in and to the Purchaser all right, title and interest of Sears Canada in and to the Garden City Property and related ancillary assets.

AFFIRMED BEFORE ME at the City of
Toronto, in the Province of Ontario, on
August 11, 2017.



Commissioner for Taking Affidavits

Karin Sachar



Stephen Champion

**THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF
STEPHEN CHAMPION AFFIRMED BEFORE ME**

ON THIS 11th DAY OF AUGUST, 2017.



A commissioner for taking Affidavits

Karin Sachar

STATUS OF TITLE

Title Number **2134980/1**
 Title Status **Accepted**
 Client File 1501809 / JDS / Kevin Selinger

The Property Registry

A Service Provider for the Province of Manitoba

**1. REGISTERED OWNERS, TENANCY AND LAND DESCRIPTION**

SEARS CANADA INC.

IS REGISTERED OWNER SUBJECT TO SUCH ENTRIES RECORDED HEREON, IN THE
 FOLLOWING DESCRIBED LAND:

PARCEL "A" PLAN 9874 WLTO
 EXC, ROADS, PLAN 11532, 15110 AND 39216 WLTO
 IN RL 13 TO 15 PARISH OF KILDONAN.

The land in this title is, unless the contrary is expressly declared, deemed to be subject to the reservations and restrictions set out in section 58 of *The Real Property Act*.

2. ACTIVE INSTRUMENTS

Instrument Type: **Caveat**
 Registration Number: **213947/1**
 Instrument Status: **Accepted**

Registration Date: 1969-11-06
 From/By: MANITOBA HYDRO ELECTIC BOARD/MANITOBA TELEPHONE
 To:

Amount:
 Notes: No notes
 Description: No description

Instrument Type: **Caveat**
 Registration Number: **81-89998/1**
 Instrument Status: **Accepted**

Registration Date: 1981-12-09
 From/By: NORTHWEST FREEHOLDS LTD.
 To:

Amount:
 Notes: No notes
 Description: No description

INSTRUMENTS THAT AFFECT THIS INSTRUMENT

<u>Registration Number</u>	<u>Instrument Type</u>	<u>Status</u>
3039452/1	Assignment Of Caveat	Accepted
3039453/1	Assignment Of Caveat	Accepted

Instrument Type: **Caveat**
 Registration Number: **81-94133/1**
 Instrument Status: **Accepted**

Registration Date: 1981-12-30
 From/By: NORTHWEST FREEHOLDS LTD.
 To:

Amount:
 Notes: No notes
 Description: No description

INSTRUMENTS THAT AFFECT THIS INSTRUMENT

<u>Registration Number</u>	<u>Instrument Type</u>	<u>Status</u>
3039448/1	Assignment Of Caveat	Accepted
3039449/1	Assignment Of Caveat	Accepted

Instrument Type: **Caveat**
 Registration Number: **81-94132/1**
 Instrument Status: **Accepted**

Registration Date: 1984-12-30
 From/By: NORTHWEST FREEHOLD LTD.
 To:

Amount:
 Notes: No notes
 Description: No description

INSTRUMENTS THAT AFFECT THIS INSTRUMENT

<u>Registration Number</u>	<u>Instrument Type</u>	<u>Status</u>
3039450/1	Assignment Of Caveat	Accepted
3039451/1	Assignment Of Caveat	Accepted

Instrument Type: **Assignment Of Caveat**
 Registration Number: **3039448/1**
 Instrument Status: **Accepted**

Registration Date: 2004-09-21
 From/By: GROSVENOR CANADA LIMITED
 To: 1562903 ONTARIO LIMITED

Amount:
 Notes: No notes
 Description: No description

Instrument Type: **Assignment Of Caveat**
 Registration Number: **3039449/1**
 Instrument Status: **Accepted**

Registration Date: 2004-09-21
 From/By: 1562903 ONTARIO LIMITED
 To: CDPQ MORTGAGE CORPORATION

Amount:
 Notes: No notes
 Description: No description

Instrument Type: **Assignment Of Caveat**
 Registration Number: **3039450/1**
 Instrument Status: **Accepted**

Registration Date: 2004-09-21
 From/By: GROSVENOR CANADA LIMITED
 To: 1562903 ONTARIO LIMITED

Amount:
 Notes: No notes
 Description: No description

Instrument Type: **Assignment Of Caveat**
 Registration Number: **3039451/1**
 Instrument Status: **Accepted**

Registration Date: 2004-09-21
 From/By: 1562903 ONTARIO LIMITED
 To: CDPQ MORTGAGE CORPORATION

Amount:
 Notes: No notes
 Description: No description

Instrument Type: **Assignment Of Caveat**
 Registration Number: **3039452/1**
 Instrument Status: **Accepted**

Registration Date: 2004-09-21
 From/By: GROSVENOR CANADA LIMITED
 To: 1562903 ONTARIO LIMITED

Amount:
 Notes: No notes
 Description: No description

Instrument Type: **Assignment Of Caveat**
 Registration Number: **3039453/1**
 Instrument Status: **Accepted**

Registration Date: 2004-09-21
 From/By: 1562903 ONTARIO LIMITED
 To: CDPQ MORTGAGE CORPORATION

Amount:
 Notes: No notes
 Description: No description

3. ADDRESSES FOR SERVICE

SEARS CANADA INC.
 222 JARVIS ST.
 TORONTO, ON.
 M5B 2B8

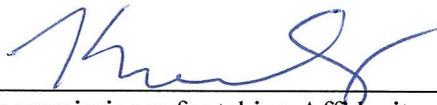
4. TITLE NOTES

No title notes

5. LAND TITLES DISTRICT Winnipeg
6. DUPLICATE TITLE INFORMATION Duplicate not produced
7. FROM TITLE NUMBERS 1780327/1 All
8. REAL PROPERTY APPLICATION / CROWN GRANT NUMBERS No real property application or grant information
9. ORIGINATING INSTRUMENTS Instrument Type: Request To Issue Title Registration Number: 3238205/1 Registration Date: 2006-01-05 From/By: SEARS CANADA INC. To: Amount:
10. LAND INDEX Lot A Plan 9874 RL 13 TO 15 KI, EXC PLS 11532, 15110 & 39216, PARCEL

CERTIFIED TRUE EXTRACT PRODUCED FROM THE LAND TITLES DATA STORAGE SYSTEM OF TITLE NUMBER 2134980/1

**THIS IS EXHIBIT "B" TO THE AFFIDAVIT OF
STEPHEN CHAMPION AFFIRMED BEFORE
ME ON THIS 11th DAY OF AUGUST, 2017.**



A commissioner for taking Affidavits

Karim Saehar

2311 McPHILLIPS STREET
WINNIPEG, MANITOBA

PURCHASE AND SALE AGREEMENT

BETWEEN

SEARS CANADA INC.

AND

WCRE INVESTMENTS LTD.

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PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is dated as of April 12, 2017.

BETWEEN:

SEARS CANADA INC.

(the “Vendor”)

AND:

WCRE INVESTMENTS LTD.

(the “Purchaser”)

WHEREAS:

- A. The Vendor is, and will be on the Completion Date, the registered and beneficial owner of the Purchased Property; and
- B. The Purchaser has agreed to purchase, and the Vendor has agreed to sell, the Purchased Property upon the terms and conditions herein contained.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions. In this Agreement, the following terms have the following meanings unless the subject matter or context otherwise requires:

“Additional Deposit” has the meaning set out in Section 2.3(b);

“Buildings” means any and all buildings and other fixed improvements on the Lands as at the date of this Agreement.

“Business Day” means a day which is not a Saturday, Sunday or statutory holiday in British Columbia, Manitoba or Ontario;

“City” means the City of Winnipeg;

“Completion Date” means the date that is 30 days after the Purchaser waives or declares satisfied the conditions precedent set out in Section 6.1;

“Condition Waiver Date” means the date that is 90 days after the date all the Delivery Materials have been provided by the Vendor to the Purchaser;

“Delayed Payment Interest” has the meaning set out in Section 8.1(b);

“Delivery Materials” means all information and material concerning the Property delivered to the Purchaser pursuant to Sections 4.1(b) and (c);

“Deposit” means, collectively, the Initial Deposit and the Additional Deposit;

“Encumbrance” means any legal notation, charge, lien, interest or other encumbrance or title defect of whatever kind or nature, regardless of form, whether or not registered or registrable and whether or not consensual or arising by law (statutory or otherwise), including any mortgage, pledge, hypothecation, security interest, judgment, caveat, court order, certificate of pending litigation, easement, right of way, encroachment, restrictive or statutory covenant, profit à prendre, right of re-entry, lease, licence, assignment, option or claim, or right of any kind or nature whatsoever which constitutes or becomes by operation of law or otherwise such a legal notation, charge, lien, interest or other encumbrance or title defect;

“Environment” means humans, animals, plants and other living organisms and air, land, water and all other external conditions or influences under which humans, animals, plants and other living organisms, live or are developed;

“Environmental Laws” means all applicable common laws, statutes, regulations, rules, standards, codes, protocols, policies, guidelines and bylaws of, or issued by or under the direction or authority of, any Governmental Authority relating to or in respect of the protection of the Environment or in respect of Hazardous Substances;

“Equipment” means all the chattels and equipment used by the Vendor or anyone on the Vendor’s behalf in connection with the operation, use, enjoyment, maintenance or management of the Lands or the Buildings and owned by the Vendor or subject to a conditional sale agreement in favour of the Vendor as of the date of this Agreement, including the items listed as inclusions in Schedule C hereto but excluding the exclusions listed in Schedule C hereto;

“Financing Instruments” has the meaning set out in Section 8.1(b);

“Governmental Authority” means any federal, provincial, regional, municipal or local government, government authority, office or official having jurisdiction or other political subdivision of any of them, or any entity, authority, agency or court or person exercising executive, legislative, judicial, regulatory or administrative functions on behalf of any such government, government authority, office or official having jurisdiction or other political subdivision thereof;

“GST” has the meaning set out in Section 8.5;

“GST Certificate” has the meaning set out in Section 8.5;

“Hazardous Substance” means any substance, material or thing or combination of substances, materials or things which could cause an adverse effect on, or which is dangerous or detrimental or potentially dangerous or detrimental to, any part of the Environment and which is prohibited, controlled or regulated under any Environmental Law and, in respect of the foregoing, is found in a material or relevant concentration for the purpose of any Environmental Law;

“Initial Deposit” has the meaning set out in Section 2.3(a);

“Lands” means the land legally described in Schedule A and all rights and benefits appurtenant thereto;

“LTO” means the applicable Land Titles Office in the City;

“Mortgage Proceeds” has the meaning set out in Section 8.1(b);

“Order” means any written directive, decision, order, notice including a notice of litigation or proceeding, letter or other written communication, that requires the taking of any measures or actions or refraining from taking any measures or actions, issued or made by any Governmental Authority under any Environmental Law;

“Permitted Encumbrances” means the Encumbrances listed in Schedule A;

“Person” includes any individual, corporation, body corporate, partnership, joint venture, trust, estate, unincorporated association or Governmental Authority however designated or constituted;

“Purchase Price” means the amount set out in Section 2.2;

“Purchased Property” means (i) the Lands, (ii) the Buildings, (iii) the Equipment, (iv) those Service Contracts (if any) which the Purchaser elects to assume pursuant to Section 4.1(g) and which are assignable to the Purchaser (or where, if assignable with the consent of a third party, such consent has been obtained) and (v) all other rights and benefits to be granted or transferred to the Purchaser under this Agreement;

“Purchaser” means WCRE Investments Ltd.;

“Purchaser’s Solicitors” means the Vancouver office of McCarthy Tétrault LLP;

“Release” includes releasing, spilling, leaking, pumping, pouring, flowing, depositing, emitting, emptying, discharging, escaping, leaching, disposing and dumping;

“Service Contracts” means those agreements entered into by or on behalf of the Vendor with respect to the furnishing of supplies or services to the Lands, the Building and/or the Equipment or with respect to the management or operation of the Lands, the Building and/or the Equipment listed in Schedule D hereto;

“Transfer” has the meaning set out in Section 7.1(b);

“Vendor” means Sears Canada Inc.; and

“Vendor’s Solicitors” means Pitblado LLP.

1.2 General Principles. For the purposes of this Agreement:

- (a) “this Agreement” means this Agreement, including the Schedules hereto, as the same may be supplemented or amended and in effect from time to time;
- (b) any reference in this Agreement to an Article, Section or Schedule is a reference to the appropriate Article, Section or Schedule in or to this Agreement;
- (c) if any provision of this Agreement or any part hereof is found or determined to be invalid, then it will be severable and severed from this Agreement and the remainder of this Agreement will be construed as if such invalid provision or part had been deleted from this Agreement;

- (d) this Agreement and all matters arising hereunder will be governed by and construed in accordance with the laws of Manitoba, which will be deemed to be the proper law hereof, and the courts of Manitoba will have the non-exclusive jurisdiction to entertain and determine all claims and disputes arising out of or in any way connected with this Agreement and the validity, existence and enforceability hereof;
- (e) the headings used in and the organization of this Agreement are solely for convenience of reference and will not in any way affect, limit, amplify or modify the terms hereof and will not be construed in any way to be part of this Agreement in the interpretation hereof;
- (f) the words "herein", "hereof" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or Schedule hereof;
- (g) the word "including", when following any general statement, term or matter, will not be construed to limit such general statement, term or matter to the specific items or matters set out immediately following such word or to similar items or matters, but will be construed to refer to all other items or matters that could reasonably fall within the scope of such general statement, term or matter, whether or not non-limiting language (such as "without limitation", "but not limited to" or words of similar import) is used with reference thereto;
- (h) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa;
- (i) any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and in force from time to time, and to any statutes or any regulations that may be passed which have the effect of supplementing or superseding such statutes or regulations; and
- (j) all references to monetary amounts in this Agreement are references to Canadian dollars.

1.3 **Schedules.** The schedules attached as Schedules A, B, C and D to this Agreement form an integral part hereof.

ARTICLE 2 PURCHASE AND SALE, PURCHASE PRICE AND PAYMENT

2.1 **Purchase and Sale.** The Purchaser hereby agrees to purchase the Purchased Property from the Vendor on the terms and conditions set out herein and the Vendor agrees to sell the Purchased Property to the Purchaser on the terms and conditions set out herein.

2.2 **Purchase Price and Allocation.** The Purchase Price for the Purchased Property will be \$5,000,000 (subject to adjustment as contemplated herein). The parties agree to use reasonable efforts to agree prior to the Completion Date on an allocation of the Purchase Price among the various components of the Purchased Property. However, the parties understand and agree that failure to agree on such an allocation prior to the Completion Date will not render this Agreement unenforceable or result in a termination of this Agreement.

2.3 **Payment of Purchase Price.** The Purchase Price for the Purchased Property will be paid as follows:

- (a) as to \$20,000 (the “**Initial Deposit**”), by payment of the Initial Deposit by the Purchaser to the Purchaser’s Solicitors, in trust, within two Business Days after the execution and delivery of this Agreement by both parties;
- (b) as to \$380,000 (the “**Additional Deposit**”), by payment of the Additional Deposit by the Purchaser to the Purchaser’s Solicitors, in trust, within two Business Days after the satisfaction or waiver of all the Purchaser’s conditions precedent set out in Section 6.1; and
- (c) as to the balance of the Purchase Price (subject to the adjustments made pursuant to Section 3.3), by payment of such amount by the Purchaser’s Solicitors to the Vendor’s Solicitors pursuant to Article 8.

2.4 Investment of Initial Deposit. The Deposit will be invested by the Purchaser’s Solicitors in an interest-bearing trust account or certificate of deposit, with interest for the account of the Purchaser.

2.5 Application of Deposit. The amount paid at any time on account of the Deposit will:

- (a) be applied on the Completion Date on account of the Purchase Price, if the Vendor and the Purchaser complete the sale and purchase of the Purchased Property on the Completion Date (and all interest accrued thereon will be released to the Purchaser); or
- (b) after the satisfaction or waiver of all the Purchaser’s conditions precedent set out in Section 6.1, be absolutely forfeited to the Vendor (together with all interest accrued thereon) upon the default of the Purchaser in completing the purchase of the Purchased Property on the Completion Date, unless such default is waived in writing by the Vendor or unless the Vendor is also in default in completing the sale of the Purchased Property, and such amount so retained by the Vendor will be absolutely forfeited to the Vendor as liquidated damages (the parties hereby agreeing that such amount constitutes a genuine pre-estimate of the damages the Vendor will suffer as a consequence of the Vendor’s default) as the Vendor’s sole and exclusive remedy and this Agreement will terminate forthwith; or
- (c) be paid to the Purchaser together with all interest accrued thereon (less the \$1.00 paid by the Purchaser to the Vendor pursuant to Section 6.1):
 - (i) if the Purchaser does not notify the Vendor of the satisfaction or waiver of all the conditions precedent set out in Section 6.1 in the manner and within the time provided therein (for greater certainty, in this circumstance the Initial Deposit and all interest earned thereon will be returned forthwith by the Purchaser’s Solicitors to the Purchaser); or
 - (ii) upon the default of the Vendor, without prejudice to any other right or remedy of the Purchaser, if the Vendor is in default of its obligation to complete the sale of the Purchased Property hereunder (for greater certainty, in this circumstance the Initial Deposit and the Additional Deposit and all interest accrued thereon will be repaid forthwith by the Purchaser’s Solicitors to the Purchaser), unless such default is waived in writing by the Purchaser or the Purchaser has elected to complete the purchase of the Purchased Property; or

- (iii) if this Agreement is terminated pursuant to Section 3.4 or if the Purchaser elects not to complete the purchase of the Purchased Property pursuant to Section 7.5 (for greater certainty, in this circumstance the Initial Deposit and the Additional Deposit and all interest accrued thereon will be repaid forthwith by the Purchaser's Solicitors to the Purchaser).

ARTICLE 3 COMPLETION, POSSESSION AND ADJUSTMENTS

3.1 Completion. The completion of the purchase and sale of the Purchased Property contemplated by this Agreement will occur on the Completion Date, or such other date as may be agreed in writing by the Vendor and the Purchaser.

3.2 Possession. The Vendor will deliver to the Purchaser vacant possession of the Purchased Property free from all Encumbrances other than the Permitted Encumbrances immediately upon completion of the sale and purchase of the Purchased Property.

3.3 Adjustments.

- (a) *Adjustment Date.* Subject to the provisions of Section 3.3(c) below, adjustments for the Purchased Property will be made as of the Completion Date and the payment due pursuant to Section 2.3(c) will be adjusted accordingly. Except as otherwise provided in this Agreement, the Vendor will be responsible for all expenses and will be entitled to all revenues accrued with respect to the Purchased Property for the period ending on the day before the Completion Date and, for the period from and including the Completion Date, the Purchaser will be responsible for all expenses and will be entitled to all revenues accruing with respect to the Purchased Property.
- (b) *Statement of Adjustments.* A statement of adjustments will be delivered to the Purchaser by the Vendor at least five Business Days prior to the Completion Date and will have annexed to it details of the calculations used to arrive at all debits and credits on such statement of adjustments. The Vendor will give the Purchaser and its representatives reasonable access to all working papers and back-up materials in order to verify the statement of adjustments.
- (c) *Readjustment.* If the final cost or amount of an item which is to be adjusted has not been determined as of the Completion Date, then an initial calculation or adjustment for such item will be made as of the Completion Date, such amount to be estimated by the Vendor and agreed to by the Purchaser, each acting reasonably, as of the Completion Date on the basis of the best evidence available at the Completion Date as to what the final cost or amount of such item will be. In each case, when such cost or amount is determined (such determination to be made as soon as possible and in any event prior to that day which is one year after the Completion Date), the Purchaser will, within 30 days of determination, provide a complete statement thereof to the Vendor for its approval (acting reasonably) and, within 30 days after the Vendor and the Purchaser have agreed on such determination, they will make a final adjustment as of the Completion Date for the item in question. In the absence of agreement by the parties, the final cost or amount of an item will be determined by independent auditors, acceptable to the Vendor and the Purchaser, each acting reasonably, with the cost of such auditors' determination being shared equally between the Vendor and the Purchaser. On closing, the parties will

execute an undertaking to further adjust between themselves to confirm the agreement set out in this Section 3.3.

3.4 Risk. The Lands, the Buildings and the Equipment will be at the Vendor's risk until the completion of the sale and purchase of the Purchased Property contemplated herein and thereafter at the risk of the Purchaser. Notwithstanding the foregoing, if the Buildings or any material part thereof are materially damaged, destroyed or expropriated prior to the Completion Date, the Purchaser will have the option, in its sole discretion, of completing the sale and purchase and accepting from the Vendor an assignment of the proceeds of insurance (in which event the Vendor will be responsible for paying the amount of the deductible or any co-insurance) or expropriation award or other compensation as well as the balance of the Purchased Property, or of not completing the sale and purchase (in which case the Deposit paid, together with all accrued interest thereon, will be returned to the Purchaser forthwith and the parties will have no further obligations hereunder).

ARTICLE 4 VENDOR'S COVENANTS, REPRESENTATIONS AND WARRANTIES

4.1 Basic Covenants. The Vendor covenants and agrees with the Purchaser that the Vendor will:

- (a) permit the Purchaser and the Purchaser's employees, engineers, agents and advisors to enter into and onto the Lands and the Buildings and carry out such inspections, tests, studies, surveys and investigations of the Lands, the Buildings and the Equipment as the Purchaser may reasonably require, all at the Purchaser's sole risk and expense (but subject to the provisions of Section 5.2);
- (b) deliver to the Purchaser at its address herein on or before the date which is 10 Business Days after the date of execution and delivery of this Agreement by both parties:
 - (i) to the extent they are in the Vendor's possession or control:
 - A. true and complete copies of all plans, drawings and specifications of the Lands and the Buildings, indicating floor plans, elevation drawings, building cross-sections and site plans, "as built" or other mechanical, electrical and plumbing drawings, building inspection certificates, licences and permits necessary for the conduct and operation of the Lands and the Buildings for the purposes they are now being conducted and operated;
 - B. true and complete copies of all Service Contracts and all third party studies, tests, appraisals, surveys, investigations, reports (including building condition, engineering, geotechnical and environmental reports and roof inspections), plans, specifications, drawings, applications and permits concerning the Lands, the Buildings and the Equipment; and
 - C. copies of all agreements and correspondence with the City regarding (i) development levies or local improvement charges payable after the Completion Date, (ii) servicing agreements, (iii) zoning, (iv) building restrictions, (v) development permits, (vi) building permits and (vii) any other relevant matters related to the development or subdivision of the Lands;

- (c) immediately deliver to the Purchaser a true and complete copy of any other document of the type described above in Section 4.1(b) which, after the full execution of this Agreement, comes within the possession or control of the Vendor;
- (d) from the date this Agreement is executed by the Vendor until the satisfaction or waiver by the Purchaser of the conditions precedent in Section 6.1, not enter into any new lease or other agreement granting any Person a tenancy or right to occupy premises in respect of the Lands and the Buildings or any part thereof or modify any existing lease and not enter into any other contract, agreement or transaction whatsoever in respect of the Lands, the Buildings or the Equipment without the Purchaser's prior written consent (which may be arbitrarily withheld), if such contract, agreement or transaction would be binding on the Purchaser as a successor owner following Closing;
- (e) use its reasonable commercial efforts to preserve the Purchased Property intact, reasonable wear and tear excepted, and operate the business on the Lands and the Buildings as a prudent owner would do;
- (f) maintain in force such insurance in respect of the Lands, the Buildings and the Equipment as a prudent owner would do and, in particular, maintain a policy of "all risks" property insurance in respect of all buildings, improvements and fixtures constituting part of the Lands (including the Buildings) in an amount equal to the full replacement value thereof;
- (g) cancel and terminate all Service Contracts effective on or before the Completion Date (and the Vendor will be solely responsible for the performance of its obligations under such Service Contracts), except for any Service Contracts in respect of which, on or before the Condition Waiver Date, the Purchaser advises the Vendor that the Purchaser wishes to assume;
- (h) pay all amounts due, owing or payable pursuant to the Service Contracts to the Completion Date;
- (i) execute, or cause to be executed, and return to the Purchaser or the Purchaser's Solicitors within two Business Days after request, all consents or letters of authority which it may be necessary for the Vendor to execute in order for the Purchaser to conduct such due diligence searches with respect to the purchase of the Purchased Property as it determines to be necessary, the form thereof to be approved by the Vendor's Solicitors and in no event will any such consent or letter of authority request; permit or authorize any inspection of the Purchased Property or any part thereof;
- (j) cooperate with the Purchaser and the Purchaser's representatives in their due diligence efforts and provide the Purchaser with access to the Lands and the Buildings and all books, records, agreements, contracts, permits, environmental engineering reports and other documentation concerning the Purchased Property in the possession or control of the Vendor or the Vendor's consultants; and
- (k) forward immediately to the Purchaser any search results from government offices which are directed to the Vendor in response to any due diligence inquiries made by or at the request of the Purchaser.

4.2 As Is, Where Is. The Purchaser acknowledges and agrees to and with the Vendor (it being acknowledged that the Vendor is relying on such acknowledgement and agreement in entering into this Agreement) as follows:

- (a) except as expressly set out in this Agreement, the Purchased Property is being sold by the Vendor, and purchased by the Purchaser, strictly on an "as is" basis;
- (b) except as expressly set out in this Agreement, no representations or warranties of any nature or kind have been made or will be made by the Vendor, or anyone acting on behalf of the Vendor, whether before or after execution of this Agreement or the Closing Date, to or for the benefit of the Purchaser with respect to the Purchased Property, including without limitation, any representation or warranty relating to any of the following matters: title to the Purchased Property or its physical condition (which includes environmental condition and soil condition), merchantability, habitability, quantity, quality, lawful use or fitness for any particular use or purpose or their compliance with applicable laws, or the availability of lawful access to or from the Lands and/or the Buildings;
- (c) the Purchaser is relying solely on its own due diligence, title searches and other searches, inspections and investigations in purchasing the Purchased Property; and
- (d) the provisions of this Section 4.2 will not merge on, but will survive, Closing.

4.3 Vendor's Representations and Warranties. The Vendor represents and warrants to the Purchaser as representations and warranties that are true as of the date hereof and will be true at the Completion Date and that are to continue and to survive (and not merge in) the purchase of the Purchased Property by the Purchaser that:

- (a) the Vendor is the registered and beneficial owner of the Purchased Property, free and clear of all Encumbrances other than the Permitted Encumbrances and any financial encumbrances to be discharged pursuant to Section 7.1(f);
- (b) the Vendor is a body corporate duly incorporated and validly existing under the laws of Canada, is duly qualified to own and sell the Purchased Property and has full power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated herein, has never been dissolved and is in good standing with Corporations Canada with respect to the filing of annual returns;
- (c) the Vendor has never been struck from the register of companies maintained by its jurisdiction of incorporation;
- (d) all necessary corporate action on the part of the directors and shareholders of the Vendor has been taken or will have been taken to authorize and approve the execution and delivery of this Agreement, the completion of the transactions contemplated herein and the performance and observance of the Vendor's other obligations under this Agreement;
- (e) there is no action or proceeding pending or to the Vendor's knowledge threatened against the Vendor before any court, arbiter, arbitration panel or administrative tribunal or agency which, if decided adversely to the Vendor, might materially affect the Vendor's ability to perform the Vendor's obligations hereunder;

- (f) no consent or approval of or registration, declaration or filing with any governmental commission, board or other regulatory body is required for the execution or delivery of this Agreement by the Vendor, the validity or enforceability of this Agreement against the Vendor, or the performance by the Vendor or any of the Vendor's obligations hereunder;
- (g) neither the Vendor entering into this Agreement nor the performance by the Vendor of the terms hereof will result in the breach of or constitute a default under any term or provision of any instrument, document, agreement, statute, bylaw, regulation, or encumbrance to which the Vendor or the Purchased Property are bound or subject or which would result in the creation of any Encumbrance on the Purchased Property;
- (h) the Vendor is not a "non-resident" of Canada within the meaning of the *Income Tax Act* (Canada);
- (i) there is no action, suit, claim or litigation pending with respect to the Purchased Property or the existing use or occupancy thereof and, as far as the Vendor is aware, no state of facts exists which could constitute the basis of any such action, suit, claim or litigation;
- (j) the Vendor has not received and has no knowledge of any notice or request from any Governmental Authority or official, insurance company or board of fire underwriters requesting the performance of any work or alteration, or identifying any deficiencies, in respect of any part of the Purchased Property;
- (k) the Vendor is not aware of having received any notice of or having any knowledge of any proposed expropriation of the Lands or any part thereof;
- (l) except as disclosed in the Delivery Materials:
 - (i) the Vendor has received no written notice of non-compliance with respect to any Environmental Laws, Orders, plans, remediation plans, approvals, permits or conditions of their issuance in any way related to the Lands and the Buildings;
 - (ii) the Vendor is not aware of its having caused or permitted, or having knowledge of, any material Release of any Hazardous Substance on, in, onto, into, over or beneath the surface of the Lands, or of any Release from a facility owned or operated by third parties on or onto the Lands; and
 - (iii) the Vendor is not aware of any underground storage tanks located thereon.
- (m) the Equipment will, on the Completion Date, be owned by the Vendor free and clear of all Encumbrances;
- (n) each of the Service Contracts is in good standing and may be terminated by the Vendor on or prior to Closing, there being no material default thereunder by the Vendor or the other contracting parties thereto, and contains the entire agreement between the parties identified therein;
- (o) the Vendor has no employees in respect of the Vendor's operation of the Lands and the Buildings for whom the Purchaser will be responsible following the completion of the sale and purchase of the Purchased Property;

- (p) there are no rights of first refusal to purchase, options to purchase, rights of first refusal to lease, options to lease, offers to lease, leases or similar agreements which have been granted by the Vendor in respect of the Lands, the Buildings or the Equipment, nor is the proposed sale of the Purchased Property contemplated herein subject to the Vendor complying with any right of first offer or similar rights for the benefit of any other parties;
- (q) the Vendor is not in material default under any of the Permitted Encumbrances or any agreement in any way related to the Lands and the Buildings and has performed in all material respects all of its obligations with respect to all such encumbrances, charges and agreements;
- (r) all accounts for work and services performed and materials placed or furnished upon or in respect of the Lands have been fully paid and satisfied, and no person is entitled to claim a lien against the Lands under *The Builders' Liens Act* (Manitoba);
- (s) the Vendor has paid all taxes related to the Lands including, without limitation, all municipal taxes, rates, levies, assessments, local improvement charges and special levies in respect of the Lands, up to and including April 30, 2017 (under the City of Winnipeg Tax Instalment Payment Plan). There is nothing owing in respect of the Lands by the Vendor to any municipal corporation or to any other corporation or commission owning or operating a public utility, water, gas or electric power other than current accounts in respect of which the payment due date has not yet passed; and
- (t) there are no property management agreements, and no operating agreements or other unregistered agreements with any neighbouring land owners, in effect in respect of the Lands for which the Purchaser will be responsible on or after the Completion Date.

The Purchaser acknowledges and agrees that where a representation or warranty in this Section 4.3 has been given on the basis of the Vendor's knowledge and belief, such knowledge and belief have been determined solely on the basis of enquiries of (i) the Vendor's lease administrator (Anita Short) and (ii) the Vendor's corporate secretary (Franco Perugini) made after each of them made reasonable and diligent enquiries, and the Purchaser acknowledges that the Vendor is not required to make nor has it made enquiries of any other person.

4.4 Indemnity. The Vendor will indemnify the Purchaser against, and save it harmless from, any loss, cost or damage of any nature whatsoever sustained by the Purchaser directly or indirectly by reason of a breach by the Vendor of any of its obligations under Section 4.1 or under any other provision of this Agreement or a breach, inaccuracy or incompleteness of any of the warranties or representations set out in Section 4.2 or in any other provision of this Agreement. The Vendor acknowledges and agrees that the Purchaser has entered into this Agreement relying on such warranties and representations and the other warranties, representations, terms and conditions set out in this Agreement.

ARTICLE 5 PURCHASER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Purchaser's Representations and Warranties. The Purchaser hereby represents and warrants as representations and warranties that are true as of the date hereof and will be true as of the Completion Date as follows:

- (a) the Purchaser validly exists and is duly qualified to purchase and own the Purchased Property and has full power, authority and capacity to enter into this Agreement and carry out the transaction contemplated herein;
- (b) there is no action or proceeding pending or to the Purchaser's knowledge, threatened against the Purchaser before any court, arbiter, arbitration panel, administrative tribunal or agency which, if decided adversely to the Purchaser, might materially affect the Purchaser's ability to perform the Purchaser's obligations hereunder; and
- (c) neither the Purchaser's entering into this Agreement nor the performance of its terms will result in the breach of or constitute a default under any term or provision of any indenture, mortgage, deed of trust or other agreement to which the Purchaser is bound or subject.

5.2 Indemnity. The Purchaser covenants and agrees with the Vendor that the Purchaser will indemnify the Vendor and save the Vendor harmless from and against any and all damages, losses, liabilities, costs and expenses (including legal fees on a solicitor and own client basis) at any time suffered or incurred by the Vendor as a result of any damage or injury to the Lands, the Buildings or the Equipment resulting from the exercise by the Purchaser of its rights under Section 4.1(a). The exercise of the Purchaser's rights under said Sections 4.1(a) and/or 4.5(j) will:

- (a) be made only after not less than two Business Days' prior written notice to the Vendor;
- (b) be made only in the company of a representative of the Vendor, should the Vendor require that such representative be present;
- (c) be carried out so as not to impair, hinder or interfere with the conduct of the Vendor's business at and from the Lands and the Buildings in any material respect; and
- (d) not involve any invasive or destructive testing unless the Purchaser forthwith after carrying out same restores the Lands, Buildings and/or Equipment to the state it was or they were in immediately prior to such invasive or destructive testing.

ARTICLE 6 CONDITIONS PRECEDENT

6.1 Purchaser's Conditions Precedent. The obligation of the Purchaser to complete the purchase of the Purchased Property on the Completion Date is subject to the following conditions precedent having been waived by the Purchaser in writing or satisfied by the Purchaser on or before 5:00 p.m. (Vancouver time) on the Condition Waiver Date:

- (a) the Purchaser obtaining the approval of its Board of Directors to the completion of its purchase of the Purchased Property pursuant to the terms of this Agreement;
- (b) the Purchaser will have conducted all its due diligence searches with respect to the Purchased Property and will have received and completed its review of the Delivery Materials and have satisfied itself, in its sole discretion, as to all matters related to the Purchased Property and the transactions contemplated hereby;

- (c) the Purchaser receiving (at its own expense and from a consultant retained by the Purchaser) and being satisfied, in its sole discretion, with an environmental assessment in respect of the Lands and the building thereon;
- (d) the Purchaser receiving (at its own expense and from a consultant retained by the Purchaser) and being satisfied, in its sole discretion, with a geotechnical report in respect of the Lands and the building thereon;
- (e) the Purchaser receiving (at its own expense and from a consultant retained by the Purchaser) and being satisfied, in its sole discretion, with a building condition report, including roof inspection, in respect of the building on the Lands;
- (f) the Purchaser receiving (at its own expense and from a surveyor retained by the Purchaser) and being satisfied, in its sole discretion, with a land and building survey in respect of the Lands and the improvements thereon;
- (g) the Purchaser obtaining (at its own expense and from a lender retained by the Purchaser) a financing commitment in respect of the acquisition of the Purchased Property that is satisfactory to the Purchaser, in its sole discretion.

In consideration of \$1.00 non-refundable paid by the Purchaser to the Vendor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Vendor, the Vendor agrees not to revoke its acceptance of the Purchaser's offer herein while this Agreement remains subject to the foregoing conditions precedent. The parties agree that, provided the condition precedent set out in Section 8.20 of this Agreement was been waived or declared satisfied, this Agreement will become an unconditional contract for the sale and purchase of the Purchased Property forthwith upon the satisfaction or waiver of the foregoing conditions precedent. For greater certainty, the Purchaser acknowledges and agrees that the \$1.00 paid to the Vendor pursuant to this paragraph is the absolute property of the Vendor and in no event will the \$1.00 be returnable to or paid to the Purchaser.

6.2 Waiver and Satisfaction. The conditions precedent set out in Section 6.1 are for the Purchaser's sole benefit and each may be waived unilaterally by the Purchaser, at the Purchaser's election. None of these conditions precedent will be considered satisfied unless the Purchaser confirms to the Vendor in writing that such condition has been satisfied. If the Purchaser does not give the Vendor notice of the satisfaction or waiver of each of the conditions precedent in Section 6.1 within the time therein provided, then the Purchaser's obligation to purchase, and the Vendor's obligation to sell, the Purchased Property pursuant to this Agreement will be at an end and the Deposit and all interest accrued on it will be returned immediately to the Purchaser.

ARTICLE 7 PREPARATION OF CLOSING DOCUMENTS

7.1 Delivery of Closing Documents by the Vendor. On or before three Business Days prior to the Completion Date, the Vendor will cause the Vendor's Solicitors to deliver to the Purchaser's Solicitors, under customary and reasonable trust conditions for like transactions in Winnipeg, Manitoba (which will include such trust conditions as may be required in order to facilitate the registration of security in favour of the Purchaser's lender, if any) the following items, duly executed by the Vendor and all other Persons (other than the Purchaser) as appropriate and in registrable form wherever appropriate, to be dealt with pursuant to this Article 7:

- (a) a Transfer executed by the Vendor conveying the Lands to the Purchaser (or its nominee, if so directed by the Purchaser), free and clear of all Encumbrances, except the Permitted Encumbrances (the "Transfer") and except for any other Encumbrances which the Vendor's Solicitors' have undertaken to discharge;
- (b) any assignment, consent or agreement in respect of any Permitted Encumbrances as may be required by the respective terms thereof;
- (c) a statement of adjustments prepared in accordance with Section 3.3;
- (d) a certificate of the Vendor, dated the Completion Date, that certifies that the Vendor has complied with all its obligations under this Agreement and that each of the warranties and representations of the Vendor set out herein is true and accurate on the Completion Date in all material respects;
- (e) discharges of all Encumbrances registered in the LTO against title to the Lands and which are not Permitted Encumbrances, subject to the Vendor's Solicitors' undertaking to discharge any such non-Permitted Encumbrances;
- (f) registrable discharges in respect of all financing statements registered under personal property security legislation against the Vendor affecting the Lands, the Buildings or the Equipment which are in respect of Encumbrances other than those which are otherwise Permitted Encumbrances, subject to the Vendor's Solicitors' undertaking to discharge any such non-Permitted Encumbrances or, alternatively, a certificate of the Vendor (which will survive the Completion Date) certifying that none of the financing statements registered under personal property security legislation against the Vendor, affect the Lands, the Buildings or the Equipment, other than in respect of Encumbrances which are Permitted Encumbrances, such certificate to be satisfactory to the Purchaser, acting reasonably;
- (g) a statutory declaration, executed by a senior officer of the Vendor, certifying that the Vendor is not a "non-resident" of Canada within the meaning of the Income Tax Act (Canada);
- (h) an assignment and assumption agreement in respect of those of the Service Contracts (if any) which the Purchaser has elected to assume pursuant to Section 4.1(g);
- (i) an agreement pursuant to which the Vendor assigns to the Purchaser and the Purchaser assumes the Vendor's right, title and interest and benefit in and to all current warranties which are assignable and which pertain to the Lands, the Buildings and the Equipment and in and to all Delivery Materials;
- (j) a bill of sale conveying and assuring to the Purchaser good and marketable title in and to the Equipment, free and clear from any Encumbrance of any kind or nature whatsoever; and
- (k) a mutual undertaking to make final adjustments in accordance with Section 3.3(d);
- (l) transmittal letters in respect of such reports provided as part of the Delivery Materials as the Purchaser may require (but the Purchaser will be responsible for any out-of-pocket costs paid by the Vendor to the applicable consultants to obtain such transmittal letters

and the Vendor's obligations in respect of such transmittal letters will be limited to requesting them of the applicable consultants and using reasonable efforts to obtain them and if the Vendor is unable to obtain them, this delivery requirement will not apply); and

- (m) such further documentation relating to the completion of the transaction contemplated herein as the Purchaser may reasonably require and which is acceptable to the Vendor, acting reasonably.

7.2 Delivery of Closing Documents by Purchaser. On or before the Completion Date, the Purchaser will cause the Purchaser's Solicitors to deliver to the Vendor's Solicitors the following documents to be dealt with pursuant to this Article 7:

- (a) any documents contemplated by Section 7.1 which require execution or delivery by the Purchaser, executed by the Purchaser;
- (b) the GST Certificate, executed by the Purchaser;
- (c) a certificate of the Purchaser, dated the Completion Date, that certifies that the Purchaser has complied with all its obligations under this Agreement and that each of the warranties and representations of the Purchaser set out herein is true and accurate on the Completion Date in all material respects;
- (d) an assignment and assumption agreement in respect of those of the Service Contracts (if any) which the Purchaser has elected to assume pursuant to Section 4.1(g);
- (e) the Deposit and the adjusted balance of the Purchase Price; and
- (f) such further documentation relating to the completion of the transaction contemplated herein as the Vendor may reasonably require and which is acceptable to the Purchaser, acting reasonably.

7.3 Preparation of Closing Documents. Except for the statement of adjustments, which will be prepared by the Vendor pursuant to Section 3.3, the closing documents contemplated in Sections 7.1 and 7.2 will be prepared by the Purchaser's Solicitors for approval by the Vendor's Solicitors, acting reasonably, and delivered to the Vendor's Solicitors by the Purchaser's Solicitors at least two Business Days prior to the Completion Date. All documents referred to in Sections 7.1 and 7.2 will be in form and substance reasonably satisfactory to the solicitors for the party entitled to delivery thereof.

ARTICLE 8 CLOSING PROCEDURE

8.1 Payment in Trust. On or before the Completion Date, the Purchaser's Solicitors will pay the following to the Vendor's Solicitors in trust:

- (a) the Deposit as required by Section 2.5(a)(i); and
- (b) the amount due to the Vendor pursuant to Section 2.3(c), less the amount to be advanced to the Purchaser under any mortgage financing arranged by the Purchaser in connection with its completion of the purchase of the Purchased Property (the "Mortgage Proceeds"). If part of the Purchase Price is to be paid from Mortgage Proceeds, payment of that amount may be delayed by the time necessarily required for registration of the

Transfer and the LTO instruments applicable to said mortgage financing (the “**Financing Instruments**”) to be completed by the LTO and reported on to the Purchaser’s mortgagee, and such part will bear interest payable to the Vendor at a rate of 3.5% per annum until paid (the “**Delayed Payment Interest**”).

8.2 Registration. Forthwith following the payment in Section 8.1 and after receipt by the Purchaser’s Solicitors of the documents referred to in Section 7.1 and after receipt by the Vendor’s Solicitors of the documents referred to in Section 7.2, the Purchaser will cause the Purchaser’s Solicitors (or any other applicable solicitors) to file in the LTO on or within one Business Day following the Completion Date, the Transfer and the Financing Instruments.

8.3 Closing. Forthwith upon confirmation of completion of the registration of the Transfer and the Financing Instruments and upon the Purchaser’s Solicitors being satisfied as to the title to the Lands after receipt of a Status of Title from The Property Registry (Manitoba) disclosing only the following:

- (a) the Purchaser as the registered owner of the Lands;
- (b) the existing title number(s) to the Lands;
- (c) the Permitted Encumbrances; and
- (d) any other charges granted by the Purchaser against the Lands,

the Purchaser will cause the Purchaser’s Solicitors, forthwith upon receipt by them of the Mortgage Proceeds, to deliver to the Vendor’s Solicitors a trust cheque payable to the Vendor’s Solicitors for the aggregate of the Mortgage Proceeds and the Delayed Payment Interest, and concurrently therewith the Purchaser’s Solicitors will be entitled to release the documents referred to in Section 7.1 to the Purchaser, the Vendor’s Solicitors will be entitled to release the documents referred to in Section 7.2 to the Vendor and the Purchaser’s Solicitors will be entitled to release to the Purchaser all interest earned on the Deposit (unless such interest has been adjusted for on the statement of adjustments executed pursuant to Section 7.1, in which event the interest will be paid to the Vendor).

8.4 Closing Deliveries. To the extent that the Vendor has not already delivered such items to the Purchaser and to the extent that such items are within the possession or control of the Vendor, the Vendor will deliver to the Purchaser, within three Business Days after the Completion Date, the items listed below:

- (a) all keys and like devices for the Lands which are in the possession or control of the Vendor; and
- (b) all files, manuals, plans and other relevant documents in the possession or control of the Vendor pertaining to the Lands and reasonably required by the Purchaser for the future continuous operation of the Lands.

8.5 Election. If, on the Completion Date, any of the representations or warranties made by the Vendor are untrue in any material respect or the Vendor is in default in a material way under any of the covenants and agreements to be observed or performed by the Vendor under this Agreement, then the Purchaser may elect not to complete the purchase of the Lands hereunder or to complete the purchase of the Lands hereunder, in either case without prejudice to any rights or remedies the Purchaser may have in respect of the Vendor’s breach or default.

**ARTICLE 9
MISCELLANEOUS**

- 9.1 Time.** Time will be of the essence of this Agreement and will remain of the essence notwithstanding the extension of any of the dates hereunder.
- 9.2 Business Day.** If the date for the performance of any act or thing falls on a day other than a Business Day, then the date for the performance of such act or thing will be extended to the next Business Day.
- 9.3 No Waiver.** No failure or delay on the part of either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as may be limited herein, either party may, in its sole discretion, exercise any and all rights, powers, remedies and recourses available to it under this Agreement or any other remedy available to it and such rights, powers, remedies and recourses may be exercised concurrently or individually without the necessity of making any election.
- 9.4 Tender.** It is agreed that any tender of documents or money may be made upon the respective solicitors for the parties and that it will be sufficient to tender a solicitor's trust cheque rather than cash.
- 9.5 Fees and Expenses.** Each party will pay its own legal fees. The Purchaser will be responsible for all registration fees payable in connection with the registration of any documents registered in connection with the completion of the sale and purchase of the Purchased Property and for any GST payable in connection with the Purchaser's acquisition of the Purchased Property.
- 9.6 GST and other Taxes.** On or before the Completion Date, the Purchaser will provide the Vendor with a certificate in the form attached hereto as Schedule E (the "GST Certificate"). The Purchaser will also be responsible for any and all other taxes payable on or by reason of the purchase of the Purchased Property, including provincial sales taxes.
- 9.7 Commission.** The Vendor will be solely responsible for any brokerage commission payable to any broker in respect of the purchase and sale of the Purchased Property pursuant to this Agreement. Each party represents to the other that it has not retained any broker in connection with this Agreement or the transaction contemplated herein.
- 9.8 Entire Agreement.** This Agreement sets out the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings among the parties with respect to the matters herein and there are no oral or written agreements, promises, warranties, terms, conditions, representations or collateral agreements whatsoever, express or implied, other than those contained in this Agreement.
- 9.9 Survival.** All representations, warranties, guarantees, promises and agreements made by the parties in this Agreement will survive the Completion Date and the transfer of the Purchased Property to the Purchaser for a period of one year after which, except for any claim made prior to the expiration of such one-year period, all such representations, warranties, guarantees, promises and agreements will have no further force or effect.
- 9.10 Amendment.** This Agreement may be altered or amended only by an agreement in writing signed by the parties hereto.

9.11 Further Assurances. Each of the parties hereto will at all times and from time to time and upon reasonable request do, execute and deliver all further assurances, acts and documents for the purpose of evidencing and giving full force and effect to the covenants, agreements and provisions in this Agreement.

9.12 Notices. Any demand or notice which may be given pursuant to this Agreement will be in writing and delivered, transmitted by fax or sent by postage prepaid mail and addressed to the parties as follows:

To the Purchaser:

WCRE Investments Ltd.
Suite 1088 – 550 Burrard Street
Vancouver, BC V6C 2B5

Attention: Andrew Hungerford

Fax No.: (604) 736-8550

With a copy to:

McCarthy Tétrault LLP
Suite 2400 – 745 Thurlow Street
Vancouver, BC V6E 0C5

Attention: Scott Smythe

Fax No.: (604) 622-5752

To the Vendor:

Sears Canada Inc.
290 Yonge Street, Suite 700
Toronto, Ontario M5B 2C3

Attention: Secretary

Fax No.: (416) 941-2321

With a copy to:

Pitblado LLP
2500 - 360 Main Street
Winnipeg, Manitoba R3C 4H6

Attention: Brant Harvey

Fax No.: (204) 957-0227

or at such other address or fax number as either party may specify in writing to the other. The time of giving and receiving any such notice will be deemed to be on the day of delivery or transmittal if

delivered or sent by fax (so long as such delivery or transmittal was carried out prior to 5:00 p.m. (Vancouver time) on a Business Day, failing which such notice will be deemed to have been given and received on the next succeeding Business Day or on the third Business Day after the date of mailing thereof if sent by mail. In the event of any disruption of mail services, all notices will be delivered or sent by fax rather than mailed.

9.13 Assignment. This Agreement is freely assignable by the Purchaser, but no assignment will release the Purchaser from its obligations under this Agreement. The Purchaser may direct the Vendor to convey registered title to the Lands to the Purchaser's nominee and the Vendor will comply with such direction.

9.14 No Partnership. Nothing in this Agreement will be construed to create a partnership or joint venture between the parties with respect to the Purchased Property.

9.15 Confidentiality. Unless the sale and purchase of the Purchased Property contemplated by this Agreement is completed, the parties will not disclose to any third party the contents or effect of this Agreement or any documents, materials or information (including the results of any due diligence tests, assessments or searches) provided pursuant to or obtained in relation to this Agreement, without the prior written consent of the other party, except that each party may disclose the same to its employees, inspectors, lenders, agents, advisors, consultants, potential investors and such other Persons as may reasonably be required and except that each party may disclose the same as required by law or in connection with any regulatory disclosure requirements which must be satisfied in connection with the proposed sale and purchase of the Purchased Property. Until such time as the transaction contemplated by this Agreement is completed, the Vendor and the Purchaser also agree that neither of them will issue any press or other publicity release or communication to the general public concerning the proposed purchase and sale of the Purchased Property without the prior written approval of the other party, unless any such disclosure is otherwise required by law.

Notwithstanding the foregoing, however, the Purchaser acknowledges that the Vendor is required to disclose the sale of the Purchase Property and the Purchase Price in its quarterly management discussion and analysis filed with the Ontario Securities Commission and other applicable Governmental Authorities.

9.16 No Further Dealing. The Vendor agrees that, so long as this Agreement is in force and effect, the Vendor will not, and will not authorize or permit any of its officers, directors, employees, agents, representatives or co-owners to, (a) initiate contact with, solicit or enter into negotiations with any Person, in each case directly or indirectly, concerning any possible proposal regarding the sale of the Purchased Property or any part thereof or (b) furnish, directly or indirectly, any internal non-public financial or business information to any Person in connection with any such possible proposal.

9.17 Counterparts. This Agreement may be executed in any number of original counterparts, with the same effect as if both parties had signed the same document, and will become effective when one or more counterparts have been signed by both parties and delivered to each of the parties. All counterparts will be construed together and evidence only one agreement, which, notwithstanding the dates of execution of any counterparts, will be deemed to be dated the reference date set out above.

9.18 Binding Effect. This Agreement will enure to the benefit of and be binding upon the successors and assigns of the parties, as applicable.

9.19 Execution by Electronic Means. This Agreement may be executed by the parties and transmitted by facsimile or other electronic means and if so executed and transmitted this Agreement will be for all purposes as effective as if the parties had delivered an executed original Agreement.

9.20 Acceptance by the Vendor. The Purchaser has executed and delivered this Agreement to the Vendor for its consideration. The Purchaser acknowledges that the Vendor's ability to accept the offer made by the Purchaser by the delivery of this Agreement executed by the Purchaser and the Vendor's execution and delivery of this Agreement are conditional on the Vendor's Board of Directors approving this Agreement and the completion of the sale of the Purchased Property pursuant to the terms of this Agreement. Accordingly, the Vendor will have a period of five Business Days from the date of this Agreement in which to obtain such approval of its Board of Directors. In consideration of \$1.00 non-refundable paid by the Vendor to the Purchaser and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Purchaser, the Purchaser agrees not to revoke or withdraw its offer herein while this Agreement remains subject to the foregoing condition precedent. For greater certainty, the Vendor acknowledges and agrees that the \$1.00 paid to the Purchaser pursuant to this paragraph is the absolute property of the Purchaser and in no event will the \$1.00 be returnable to or paid to the Vendor.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

By the Vendor:

By the Purchaser:

SEARS CANADA INC.

WCRE INVESTMENTS LTD.

By: P. M. Moran
Authorized Signatory

By: [Signature]
Authorized Signatory

By: Daniel Westlund
Authorized Signatory

By: _____
Authorized Signatory

**SCHEDULE A
LANDS AND PERMITTED ENCUMBRANCES**

Property

Legal Description:

PARCEL "A" PLAN 9874 WLTO
EXC, ROADS, PLAN 11532, 15110 AND 39216 WLTO
IN RL 13 TO 15 PARISH OF KILDONAN.

Current Title Number:

2134980/1

Permitted Encumbrances

The Lands are subject to the following Permitted Encumbrances:

1. Encumbrances for real property taxes (which term includes charges, rates and assessments) or in connection with the Purchased Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for pursuant to Section 3.3;
2. Any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent which do not materially detract from the value or marketability of the Purchased Property or materially impair or restrict the current use of the Purchased Property; and
3. Caveat No. 213947/1 - an easement in favour of Manitoba Hydro Electric Board / Manitoba Telephone registered November 6, 1969;
4. Caveat No. 81-89998/1 - in favour of Northwest Freehold Ltd. registered December 9, 1981;
5. Caveat No. 81-94133/1 - in favour of Northwest Freehold Ltd. registered December 30, 1981;
6. Caveat No. 81-94132/1 - in favour of Northwest Freehold Ltd. registered December 30, 1984;
7. Assignment of Caveat No. 3039448/1 - in favour of 1562903 Ontario Limited registered by Grosvenor Canada Limited on September 21, 2004 with respect to Caveat No. 81-94133/1;
8. Assignment of Caveat No. 3039449/1 - in favour of CDPQ Mortgage Corporation registered by 1562903 Ontario Limited on September 21, 2004 with respect to Caveat No. 81-94133/1;
9. Assignment of Caveat No. 3039450/1 - in favour of 1562903 Ontario Limited registered by Grosvenor Canada Limited on September 21, 2004 with respect to Caveat No. 81-94132/1;
10. Assignment of Caveat No. 3039451/1 in favour of CDPQ Mortgage Corporation registered by 1562903 Ontario Limited on September 21, 2004 with respect to Caveat No. 81-94132/1;
11. Assignment of Caveat No. 3039452/1 in favour of 1562903 Ontario Limited registered by Grosvenor Canada Limited on September 21, 2004 with respect to Caveat No. 81-89998/1; and

- 12 Assignment of Caveat No. 3039453/1 in favour of CDPQ Mortgage Corporation registered by 1562903 Ontario Limited on September 21, 2004 with respect to Caveat No. 81-8998/1.

**SCHEDULE B
EQUIPMENT**

Part 1 - Inclusions

The following items are included in the "Equipment":

All fixtures, equipment, tools and other such items and personal property which do not constitute chattels.

Part 2 - Exclusions

The following items are excluded from the "Equipment"

All chattels.

**SCHEDULE C
SERVICE CONTRACTS**

- | | | |
|-----|---|---|
| 1. | Services Agreement- Building Automation Systems | Services Agreement with Direct Energy Business Services Limited (d/b/a Airtron Canada) effective February 1, 2015 for an initial term ending January 31, 2019 |
| 2. | Services Agreement- Heating, Ventilation & Air Conditioning | Services Agreement with Direct Energy Business Services Limited (d/b/a Airtron Canada) effective February 1, 2015 for an initial term ending January 31, 2019 |
| 3. | Services Agreement- Dock Doors & Levelors | Services Agreement with Creative Door Service Inc. for an initial term ending January, 2019 |
| 4. | Services Agreement- Elevating Services | Services Agreement with Kane Inc. effective May 1, 2011 for an initial term ending January 31, 2019 |
| 5. | Services Agreement- Fire Protection | Services Agreement with Vipond Systems Group Inc. effective September 1, 2012 for an initial term ending August 31, 2017 |
| 6. | Services Agreement- Janitorial & Hygiene | Services Agreement with Biochem Environmental Solutions Inc. effective February 1, 2011 for an initial term ending January 31, 2016 and extended by amendment until April 30, 2019, effective March 1, 2015 |
| 7. | Services Agreement- Janitorial & Hygiene | Services Agreement with Scandinavian Building Services Ltd. effective May 1, 2014 for a 5 year term |
| 8. | Services Agreement- Pest Control | Services Agreement with Orkin Canada Corp. effective February 1, 2016 for an initial term ending January 31, 2021 |
| 9. | Services Agreement- Relamping | Services Agreement with Relamping Services Canada Limited effective November 1, 2015 for an initial term ending October 31, 2017 |
| 10. | Master Procurement Agreement- Snow Removal | Services Agreement with Proscapes until November, 2017 |

11. Services Agreement- Waste & Recycling
Services Agreement with Waste Management of Canada Corp. effective November 1, 2011 for an initial term ending October 31, 2016 and extended by amendment until October 31, 2017, effective November 1, 2016
12. Services Agreement- Waste & Recycling
Services Agreement with Greenspace Waste Solutions effective June 1, 2014 for an initial term ending October 31, 2016 and extended by amendment until October 31, 2017, effective November 1, 2016

**SCHEDULE D
GST CERTIFICATE**

CERTIFICATE AS TO GST REGISTERED STATUS OF PURCHASER

TO: SEARS CANADA INC. (the "Vendor")

FROM: • (the "Purchaser")

RE: Purchase and sale agreement (the "Purchase Agreement") dated as of • between the Vendor and the Purchaser in respect of the purchase and sale of, among other things, the lands and premises located at 2311 McPhillips Street, Winnipeg, Manitoba and legally described as • (the "Lands")

The Purchaser hereby declares, certifies and agrees that:

1. the Purchaser is the recipient (as defined in the *Excise Tax Act* (Canada) (the "Act")) of the supply of the Lands and is registered under Part IX, Division V, Subdivision d of the Act for the collection and remittance of goods and services tax ("GST"), its registration number is _____ and such registration is in good standing and has not been revoked or terminated;
2. the Lands are being purchased by the Purchaser as principal for its own account and are not being purchased by the Purchaser as an agent, trustee, or otherwise on behalf of or for another person;
3. will self-assess, be liable for and remit directly to the Receiver General of Canada all GST payable in connection with the sale of the Lands by the Vendor to the Purchaser; and
4. the Purchaser will indemnify and save harmless the Vendor from any GST, penalties, costs, interest and other amounts which may be payable by or assessed against the Vendor or amounts for which the Vendor may be or become liable under the *Excise Tax Act* (Canada) as a result of or in connection with the Purchaser's failure to pay, or the Vendor's failure to collect and remit, any GST applicable in respect of the sale of the Lands or the Purchaser's failure to comply with the provisions of this Certificate.

The Purchaser acknowledges that the Vendor is relying on this Certificate in completing the sale of the Lands.

DATED as of •.

•

By _____
Authorized Signatory

**AMENDMENT TO PURCHASE AND SALE AGREEMENT AND WAIVER OF
CONDITIONS**

THIS AMENDMENT (the “**Amendment**”) is made as of the 28th day of July, 2017

BETWEEN:

SEARS CANADA INC. (the “**Vendor**”)

– and –

WCRE INVESTMENTS LTD. (the “**Purchaser**”)

WHEREAS:

- A. The Vendor and the Purchaser entered into a Purchase and Sale Agreement dated April 12, 2017 (as amended, the “**Purchase Agreement**”) pursuant to which the Purchaser agreed to purchase, and the Vendor agreed to sell, the Purchased Property (as defined in the Purchase Agreement).
- B. On June 22, 2017, the Vendor and certain of its affiliates and subsidiaries (collectively, the “**Vendor Group**”) applied for and were granted protection from their creditors under the *Companies’ Creditors Arrangement Act* pursuant to the Initial Order of the CCAA Court.
- C. On July 13, 2017, the CCAA Court granted an order which, among other things, approved the sale and investment solicitation process (“**SISP**”), which governs the process for soliciting and selecting bids for the sale of the Business, Assets and/or Leases (each as defined in the SISP) of the Vendor Group. The Vendor Group is withdrawing the Purchased Property from the SISP in accordance with Section 16 thereof.
- D. The Vendor and the Purchaser wish to amend the Purchase Agreement in accordance with Section 9.10 thereof on the terms set forth in this Amendment.

NOW THEREFORE, the parties agree as follows:

1. Capitalized terms used in this Amendment but not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.
2. The followings definitions are hereby added to Section 1.1 of the Purchase Agreement:

“**Approval and Vesting Order**” means an order issued by the CCAA Court approving, among other things, this Agreement and the transactions contemplated by this Agreement, and conveying to the Purchaser all of the Vendor’s right, title and interest in and to the Purchased Property free of all Encumbrances other than Permitted Encumbrances.

“**CCAA Court**” means the Ontario Superior Court of Justice (Commercial List).

“**CCAA Proceedings**” means the proceedings commenced under the *Companies Creditors’ Arrangement Act* (Canada) by the Vendor Group pursuant to the Initial Order (Court File No. CV-17-11846-00CL).

“**Initial Order**” means the Initial Order granted by the CCAA Court on June 22, 2017 pursuant to which the Vendor Group was granted protection from its creditors under the *Companies Creditors’ Arrangement Act* (Canada) (as amended and restated on July 13, 2017 and as may be further amended, restated, supplemented and/or modified from time to time).

“**Monitor**” means FTI Consulting Canada Inc., as Monitor in the CCAA Proceedings and not in its personal capacity.

“**Vendor Group**” means the Vendor and certain of its affiliates and subsidiaries that were granted protection from their creditors under the *Companies Creditors’ Arrangement Act* (Canada).”

3. The definitions of “Completion Date” and “Condition Waiver Date” in Section 1.1 of the Purchase Agreement are hereby deleted in their entirety and replaced with the following:

“**Completion Date**” means the later of the date that is (i) 21 days after the Purchaser waives or declares satisfied the conditions precedent set out in Section 6.1, and (ii) five Business Days following the issuance of the Approval and Vesting Order, or such other date agreed to by the parties in writing, provided that the Vendor shall have the right (with the approval of the Monitor) to extend the Completion Date from time to time to a later date (no later than October 16, 2017) determined by the Vendor (with the approval of the Monitor) by notice to the Purchaser on or before three Business Days prior to the scheduled Completion Date.

“**Condition Waiver Date**” means July 26, 2017.”

4. Paragraph 2.3(b) of the Purchase Agreement is hereby amended by deleting the words “Purchaser’s Solicitors” and replacing them with the word “Monitor”.
5. Paragraph 2.3(c) of the Purchase Agreement is hereby amended by deleting the words “Vendor’s Solicitors” and replacing them with the word “Monitor”.
6. The contents of Section 2.4 of the Purchase Agreement are deleted and replaced with the words “Intentionally Deleted”.
7. Paragraph 2.5(b) of the Purchase Agreement is hereby amended by adding the words “and the issuance of the Approval and Vesting Order” following “after the satisfaction or waiver of all the Purchaser’s conditions precedent set out in Section 6.1”.
8. The phrase “Section 7.5” in paragraph 2.5(c)(iii) of the Purchase Agreement is hereby deleted and replaced with “Section 8.5”.

9. Paragraph 4.3(a) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:
 - “(a) the Vendor is the registered and beneficial owner of the Purchased Property, free and clear of all Encumbrances other than the Permitted Encumbrances, any financial encumbrances to be discharged pursuant to Section 7.1(f) and any Encumbrances associated with the Initial Order to be released under the Approval and Vesting Order;”.
10. Paragraph 4.3(b) of the Purchase Agreement is hereby amended by adding the words “subject to the Approval and Vesting Order and authorization as is required by the CCAA Court” following “the Vendor is a body corporate duly incorporated and validly existing under the laws of Canada, is duly qualified to own and sell the Purchase Property and has full power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated herein”.
11. Paragraph 4.3(d) of the Purchase Agreement is hereby amended by adding the words “subject to the Approval and Vesting Order and authorization as is required by the CCAA Court” at the end of the paragraph before the semicolon.
12. Paragraph 4.3(e) of the Purchase Agreement is hereby amended by adding the words “other than the CCAA Proceedings” at the beginning of the paragraph.
13. Paragraph 4.3(f) of the Purchase Agreement is hereby amended by adding the words “other than the Approval and Vesting Order and authorization as is required by the CCAA Court” at the beginning of the paragraph.
14. Paragraph 4.3(m) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:
 - “(m) the Equipment will be transferred to the Purchaser on the Completion Date free and clear of all Encumbrances pursuant to the Approval and Vesting Order;”.
15. The following Section 4.5 is hereby added to the Purchase Agreement:

“4.5 Pre-Filing Claims. The Purchaser hereby acknowledges and agrees that any and all claims that the Purchaser may have against the Vendor pursuant to this Agreement or any agreement or document delivered in connection with this Agreement shall be treated as pre-filing unsecured claims in the CCAA Proceedings.”
16. The following Section 6.3 is hereby added to the Purchase Agreement:

“6.3 Condition Precedent for the Mutual Benefit of the Parties. The obligations of either the Vendor or the Purchaser to complete the purchase and sale of the Purchased Property is subject to the following condition to be fulfilled or performed, on or before August 25, 2017, which condition is for the mutual benefit of each of the parties and may only be satisfied or waived, in whole or in

part, by agreement of the parties to this Agreement: the Approval and Vesting Order shall have been issued and entered by the CCAA Court and such order shall not have been reversed, modified, amended or stayed.”

17. The first paragraph of Section 7.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“Delivery of Closing Documents by the Vendor. On or before the Completion Date, the Vendor will cause the Vendor’s Solicitors to deliver to the Purchaser’s Solicitors the following documents to be dealt with pursuant to this Article 7:”

18. Paragraph 7.1(a) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“(a) the Approval and Vesting Order;”.

19. The contents of Sections 7.1(e) and (f) of the Purchase Agreement are deleted in their entirety and replaced with the words “Intentionally Deleted”.

20. Paragraph 7.1(j) of the Purchase Agreement is hereby amended by adding the words “other than Permitted Encumbrances” at the end of the paragraph.

21. The following Section 7.4 is hereby added to the Purchase Agreement:

“7.4 Closing Escrow. On or before the Completion Date, the Purchaser’s Solicitors and the Vendor’s Solicitors shall exchange the respective documents and deliveries (including the adjusted balance of the Purchase Price) required under this Article 7 (the **“Closing Deliveries”**) in escrow and following the occurrence of same the Purchaser and the Vendor shall provide on the Completion Date an acknowledgement to the Monitor that all conditions precedent under this Agreement have been satisfied or waived and the Closing Deliveries shall remain in escrow until the Monitor has delivered the Monitor’s certificate contemplated in the Approval and Vesting Order (the **“Monitor’s Certificate”**) to the Vendor and the Purchaser, upon the occurrence of which the escrow shall be lifted, the Closing Deliveries shall take effect as of the date and time set out in the Monitor’s Certificate, the entire amount of the Deposit and the adjusted balance of the Purchase Price shall be forthwith released to the Vendor and the closing of the transaction contemplated in this Agreement shall be deemed to have occurred as of such date and time and the Closing Deliveries shall be released to each of the Vendor and Purchaser.”

22. The contents of Sections 8.1, 8.2 and 8.3 of the Purchase Agreement are deleted and replaced with the words “Intentionally Deleted”.

23. The following Section 8.6 is hereby added to the Purchase Agreement:

“8.6 Approval and Vesting Order. Notwithstanding anything else contained in this Agreement or elsewhere, the Purchaser acknowledges and agrees that the

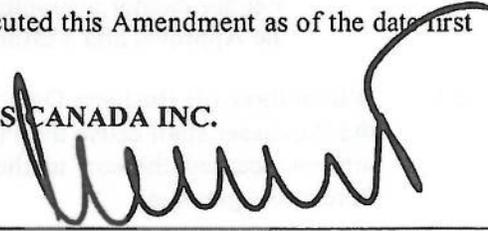
Vendor cannot guarantee that it will obtain the Approval and Vesting Order and the Approval and Vesting Order may or may not be granted by the CCAA Court.”

24. Within three (3) Business Days of the date of execution and delivery of this Amendment, the Purchaser shall cause the Purchaser’s Solicitors to transfer the Initial Deposit and all interest accrued thereon to the Monitor, in trust, to be held in accordance with the Purchase Agreement.
25. Upon the execution and delivery of this Amendment by the parties hereto, the Purchaser acknowledges and agrees that it hereby waives, and will be deemed to have waived, all the Purchaser’s conditions precedent set out in Section 6.1 of the Purchase Agreement and the parties acknowledge the foregoing as adequate and timely waiver of such Purchaser’s conditions precedent.
26. Except as specifically provided in this Amendment, no other amendments, revisions or changes are made to the Purchase Agreement or the Schedules thereto. All other terms and conditions of the Purchase Agreement, including the Schedules thereto, remain in full force and effect.
27. This Amendment and the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof.
28. This Amendment shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.
29. Upon the effectiveness of this Amendment, each reference in the Purchase Agreement to “this Agreement”, “hereunder”, “herein” or other words of like import, shall mean and be a reference to the Purchase Agreement as amended hereby.
30. This Amendment may be executed in counterparts and delivered by means of facsimile or portable document format (PDF), each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

SEARS CANADA INC.

By: 

Name: L. LAMBERT

Title: Assoc. General Counsel

WCRE INVESTMENTS LTD.

By: 

Name: ANDREW HUMBERFORD

Title: DIRECTOR

IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

Court File No: CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

Ontario

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AFFIDAVIT OF STEPHEN CHAMPION

(Affirmed August 11, 2017)

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Lawyers for the Applicants

Tab 3

Court File No. CV-17-11846-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	FRIDAY, THE 18 TH
)	
JUSTICE HAINEY)	DAY OF AUGUST, 2017

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

Applicants

APPROVAL AND VESTING ORDER – GARDEN CITY MALL WINNIPEG

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "CCAA") for an order, *inter alia*, approving: (i) the sale of lands and buildings located at 2311 McPhillips Street, Winnipeg, Manitoba, together with certain ancillary assets (the "**Transaction**") contemplated by a Purchase and Sale Agreement between Sears Canada Inc. ("**Sears Canada**"), as vendor, and WCRE Investments Ltd. (the "**Purchaser**") as purchaser dated April 12, 2017, as amended by an amendment to purchase and sale agreement and waiver of conditions dated as of July 28, 2017 (the "**APA**") and certain related relief, and (ii) vesting in and to the Purchaser all right, title and interest of Sears Canada in and to the Purchased Property (as defined in the APA), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Stephen Champion affirmed on August 11, 2017 including the exhibits thereto (the “**Champion Affidavit**”), and the Second Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn August ●, 2017, filed:

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), or in the APA, as applicable.

APPROVAL OF THE APA

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the APA by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor after consultation with the DIP Lenders) and the Purchaser may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Property to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof. The legal descriptions and applicable land registry offices with respect to the Purchased Property are as set out on Schedule “B” hereto.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Purchased

Property shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Purchased Property (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”);
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Manitoba) or any other personal property registry system; and
- (c) those Claims listed on Schedule “B” hereto;

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances listed on Schedule “C” hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Property are hereby expunged and discharged as against the Purchased Property including the real property identified in Schedule “B”.

5. THIS COURT ORDERS that upon the registration in the Winnipeg Land Titles Office (the “**WLTO**”) of a Request/Transmission in the form prescribed by *The Real Property Act* (Manitoba), C.C.S.M. c. R30, duly executed by Sears Canada, the District Registrar of the WLTO is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule “B” hereto in fee simple, and is hereby directed to specifically discharge, cancel, delete and expunge from title to the real property described in Schedule “B” all of the Encumbrances listed in Schedule “B” hereto, notwithstanding that the time for appeal of this Approval and Vesting Order has not yet expired.

6. THIS COURT ORDERS that the net proceeds received on the Completion Date of the Transaction shall be paid forthwith by the Monitor to the DIP Term Agent in partial repayment of amounts owing by the Applicants under the DIP Term Credit Agreement.
7. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in accordance with the terms of the APA.
8. THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:
 - (a) the rights and obligations of Sears Canada and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the "**Agent**") under the Amended and Restated Agency Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017;
 - (b) the rights and obligations of Sears Canada and the Agent under the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017; and
 - (c) the terms of the Liquidation Sale Approval Order granted July 18, 2017 including the Sale Guidelines attached as Schedule "A" thereto.

SEALING

9. THIS COURT ORDERS that Confidential Appendices "A" and "B" to the Second Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court

GENERAL PROVISIONS

10. THIS COURT ORDERS that, notwithstanding:
 - (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or

(c) any assignment in bankruptcy made in respect of any of the Applicants;

the vesting of the Purchased Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

12. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

SCHEDULE “A”

Court File No. CV-17-11846-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES’ CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

Applicants

MONITOR’S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor’s Certificate have the meanings ascribed to them in the Order of the Court dated August 18, 2017 (the “**Approval and Vesting Order**”) approving the Purchase and Sale Agreement between Sears Canada Inc. (“**Sears Canada**”), as vendor, and WCRE Investments Ltd. (the “**Purchaser**”) as purchaser dated April 12, 2017, as amended by an amendment to purchase and sale agreement and waiver of conditions dated as of July 28, 2017 (the “**APA**”), a copy of which is attached as Exhibit B to the Affidavit of Stephen Champion dated August 11, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Purchaser of Sears Canada’s right, title and interest in and to the Purchased Property (as defined in the APA), which vesting is to be effective with respect to the Purchased Property upon the delivery by the Monitor to the Purchaser and Sears Canada of a certificate confirming (i) the conditions precedent as set out in the APA have been satisfied or waived by the

- 2 -

Purchaser and Sears Canada, as applicable; and (ii) the Transaction has been completed to the satisfaction of the Monitor.

THE MONITOR CERTIFIES the following:

1. The conditions precedent as set out in the APA have been satisfied or waived by the Purchaser and Sears Canada, as applicable; and
2. The Transaction has been completed to the satisfaction of the Monitor.

This Monitor's Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor of Sears Canada Inc., et al. and not in its personal or corporate capacity

Per: _____

Name:

Title:

SCHEDULE "B"

No.	Location/ Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
1.	Garden City Mall 2311 McPhillips Street, Winnipeg, Manitoba	MB	The Property Registry – Winnipeg	PARCEL "A" PLAN 9874 WLTO EXC, ROADS, PLAN 11532, 15110 AND 39216 WLTO IN RL 13 TO 15 PARISH OF KILDONAN. Current Title Number: 2134980/1	NIL

**SCHEDULE “C”
PERMITTED ENCUMBRANCES**

“Permitted Encumbrances” means, collectively:

1. Encumbrances for real property taxes (which term includes charges, rates and assessments) or in connection with the Purchased Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for pursuant to Section 3.3 of the APA;
2. Any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent which do not materially detract from the value or marketability of the Purchased Property or materially impair or restrict the current use of the Purchased Property;
3. Caveat No. 213947/1 – an easement in favour of Manitoba Hydro Electric Board / Manitoba Telephone registered November 6, 1969;
4. Caveat No. 81-89998/1 – in favour of Northwest Freehold Ltd. registered December 9, 1981;
5. Caveat No. 81-94133/1 – in favour of Northwest Freehold Ltd. registered December 30, 1981;
6. Caveat No. 81-94132/1 – in favour of Northwest Freehold Ltd. registered December 30, 1984;
7. Assignment of Caveat No. 3039448/1 – in favour of 1562903 Ontario Limited registered by Grosvenor Canada Limited on September 21, 2004 with respect to Caveat No. 81-94133/1;
8. Assignment of Caveat No. 3039449/1 – in favour of CDPQ Mortgage Corporation registered by 1562903 Ontario Limited on September 21, 2004 with respect to Caveat No. 81-94133/1;
9. Assignment of Caveat No. 3039450/1 – in favour of 1562903 Ontario Limited registered by Grosvenor Canada Limited on September 21, 2004 with respect to Caveat No. 81-94132/1;
10. Assignment of Caveat No. 3039451/1 – in favour of CDPQ Mortgage Corporation registered by 1562903 Ontario Limited on September 21, 2004 with respect to Caveat No. 81-94132/1;
11. Assignment of Caveat No. 3039452/1 – in favour of 1562903 Ontario Limited registered by Grosvenor Canada Limited on September 21, 2004 with respect to Caveat No. 81-89998/1; and
12. Assignment of Caveat No. 3039453/1 – in favour of CDPQ Mortgage Corporation registered by 1562903 Ontario Limited on September 21, 2004 with respect to Caveat No. 81-89998/1.

IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

Court File No: CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

MOTION RECORD OF THE APPLICANTS

(Motion for Approval of Asset Purchase Agreement – Garden City)

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